

BILL LOCKYER, Attorney General  
of the State of California  
JOSE R. GUERRERO, State Bar No. 97276  
Supervising Deputy Attorney General  
CATHERINE E. SANTILLAN  
Senior Legal Analyst  
California Department of Justice  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-5579  
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-367

KARL LAWRENCE JOHNSON  
28 Randolph Avenue  
S. San Francisco, CA 94080

**STATEMENT OF ISSUES**

Applicant/Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 5, 2006, the Respiratory Care Board of California (Board), Department of Consumer Affairs, received an application for a respiratory care practitioner license from Karl Lawrence Johnson (Applicant/Respondent). On or about May 27, 2006, Applicant certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on August 22, 2006. On or about August 25, 2006, Applicant requested a hearing.

///

///

JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732 of the Code states:

"(a) The board shall investigate each and every an applicant for a license, before a license is issued, in order to determine whether or not the applicant has in fact the qualifications required by this chapter.

"(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3754 of the Code states: "The board may deny an application for, or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license in any decision made after a hearing, as provided in Section 3753."

8. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

1 “(g) Conviction of a violation of any of the provisions of this chapter or of  
2 any provision of Division 2 (commencing with Section 500), or violating, or  
3 attempting to violate, directly or indirectly, or assisting in or abetting the violation  
4 of, or conspiring to violate any provision or term of this chapter or of any provision  
5 of Division 2 (commencing with Section 500).”

6 9. Section 3752 of the Code states:

7 “A plea or verdict of guilty or a conviction following a plea of nolo  
8 contendere made to a charge of any offense which substantially relates to the  
9 qualifications, functions, or duties of a respiratory care practitioner is deemed to be  
10 a conviction within the meaning of this article. The board shall order the license  
11 suspended or revoked, or may decline to issue a license, when the time for appeal  
12 has elapsed, or the judgment of conviction has been affirmed on appeal or when an  
13 order granting probation is made suspending the imposition of sentence,  
14 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing  
15 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or  
16 setting aside the verdict of guilty, or dismissing the accusation, information, or  
17 indictment.”

18 10. California Code of Regulations, title 16, section 1399.370, states:

19 “For the purposes of denial, suspension, or revocation of a license, a crime  
20 or act shall be considered to be substantially related to the qualifications, functions  
21 or duties of a respiratory care practitioner, if it evidences present or potential  
22 unfitness of a licensee to perform the functions authorized by his or her license or in  
23 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts  
24 shall include but not be limited to those involving the following:

25 “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
26 abetting the violation of or conspiring to violate any provision or term of the Act.

27 “(c) Conviction of a crime involving driving under the influence or reckless  
28 driving while under the influence.”

1 COST RECOVERY

2 11. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the  
4 board, the board or the administrative law judge may direct any practitioner or applicant  
5 found to have committed a violation or violations of law to pay to the board a sum not to  
6 exceed the costs of the investigation and prosecution of the case."

7 12. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution  
9 shall include attorney general or other prosecuting attorney fees, expert witness fees, and  
10 other administrative, filing, and service fees."

11 13. Section 3753.1 of the Code states:

12 "(a) An administrative disciplinary decision imposing terms of probation  
13 may include, among other things, a requirement that the licensee-probationer pay the  
14 monetary costs associated with monitoring the probation. "

15 FIRST CAUSE FOR DENIAL OF APPLICATION

16 (Conviction)

17 14. Respondent's application is subject to denial under sections 3750(d),  
18 3752 [conviction], CCR 1399.370 (a) and (c) in that he has two alcohol-related  
19 convictions. The circumstances are as follows:

20 2003 conviction

21 15. On or about March 1, 2003, Colma Police Officer N. Lemus stopped  
22 respondent for speeding. When he spoke with respondent, he smelled an odor of alcohol  
23 on his breath. He asked respondent to exit the vehicle to perform field sobriety tests.  
24 Respondent became irate and began yelling at the officer. Officer Lemus asked for consent  
25 to pat search his person, and respondent consented but would not stay still when Officer  
26 Lemus attempted to search him. Respondent was very rigid and sweating and attempted to  
27 pull away. Officer Lemus then held his right arm as Officer Pon held his left arm to  
28 handcuff him. Respondent was placed in the rear seat of the patrol vehicle. Respondent

1 began to hit the window with his head, causing damage to the vehicle. The officers  
2 requested a “wrap” to secure respondent and prevent him from harming himself and doing  
3 further damage to the vehicle. Based on respondent’s driving and objective symptoms,  
4 Officer Lemus arrested respondent for violating Penal Code section 148(A)(1), resisting  
5 arrest, 594(B)(2)(A) vandalism, and Vehicle Code section 23152(a), driving under the  
6 influence of alcohol. Respondent refused to submit to blood or urine alcohol testing.

7           16. On or about April 3, 2003, a criminal complaint titled *People of the*  
8 *State of California vs. Karl Lawrence Johnson, Jr.*, case no. NM328424A was filed in  
9 Superior Court, San Mateo County. Count 1 charged respondent with a violation of  
10 Vehicle Code section 23152(a), driving under the influence of alcohol, with a special  
11 allegation of Vehicle Code section 23577(a)(1), failure to take a chemical test. Count 2  
12 charged respondent with a violation of Penal Code section 148(A)(1), resisting arrest.  
13 Count 3 charged respondent with a violation of Penal Code section 594(B)(2)(A),  
14 vandalism.

15           17. On or about April 14, 2003, respondent entered a plea of not guilty  
16 to all counts. On or about May 21, 2003, respondent withdrew his plea of not guilty to  
17 Count 1 and entered a plea of nolo contendere. He admitted the special allegation alleged  
18 in Count 1. Counts 2 and 3 were dismissed on motion of the District Attorney, due to the  
19 negotiated plea. The Court accepted respondent’s plea, and he was convicted of Count 1  
20 and placed on three years court probation. Respondent was ordered to serve ninety-six  
21 (96) hours in county jail. He was recommended to the Sheriff’s work program and fined a  
22 total of \$1,321.00, payable in installments. The Court ordered respondent to enter and  
23 complete the First Offender Program, and to provide proof of completion on or before  
24 November 21, 2003. His driver’s license was restricted for ninety (90) days, and allowed  
25 to drive to and from employment, during the course of employment, and to and from the  
26 treatment program.

27 ///

28                           1995 conviction

1                   18.     On or about November 10, 1995, San Bruno Police Officer Daryl  
2 McCoy was investigating a matter at a bar and restaurant in San Bruno when he witnessed  
3 a verbal argument between the bartender and respondent. The bartender refused to serve  
4 respondent alcohol, and respondent became angry and walked outside the restaurant.  
5 Officer McCoy saw respondent use his fists to punch and break two restaurant windows.  
6 Respondent had deep lacerations on his left and right wrists. Officer McCoy approached  
7 respondent, and briefly struggled with him in an effort to detain him. Since respondent was  
8 bleeding heavily from both wrists, Officer McCoy called San Bruno Fire Department and  
9 Baystar Medical Services to treat his injuries. Officer McCoy advised respondent that he  
10 was under arrest for violating Penal Code section 594, vandalism. Respondent became  
11 enraged and three police officers had to subdue him to effect the arrest. One of the officer's  
12 prescription eyeglasses were broken in the struggle, and he requested restitution during  
13 respondent's court proceedings.

14                   19.     On or about December 4, 1995, a criminal complaint titled *People of*  
15 *the State of California v. Karl Lawrence Johnson, Jr.*, case no. NM260492A, was filed in  
16 Superior Court, San Mateo County. Count 1 charged respondent with a violation of Penal  
17 Code section 148(A), resisting or obstructing a police officer. Count 2 charged respondent  
18 with a violation of Penal Code section 594(B)(4), vandalism less than \$400.00. On or  
19 about December 11, 1995, respondent entered a plea of not guilty to all counts. On or  
20 about December 26, 1995, respondent withdrew his not guilty plea to Count 2 and entered  
21 a plea of nolo contendere. The District Attorney dismissed Count 1 due to the negotiated  
22 plea. The Court accepted respondent's plea and he was convicted of violating Penal Code  
23 section 594(B)(4). He was placed on probation for one year, ordered to serve two days in  
24 county jail, and recommended to the Sheriff's work program. He was ordered to pay  
25 \$110.00 (one hundred ten dollars) to the State Restitution Fund, and to make restitution to  
26 the restaurant and San Bruno Police Department.

27 ///

28                   20.     Therefore, respondent's license is subject to denial based on his

1 2003 conviction for driving under the influence and the 1995 conviction for vandalism in  
2 violation of Business & Professions code sections 3750(d), 3752 and CCR 1399.370 (a)  
3 and (c) [substantially related conviction involving alcohol.]

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters  
6 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

7 1. Denying the application of Karl Lawrence Johnson for a respiratory  
8 care practitioner license;

9 2. Directing Karl Lawrence Johnson to pay the Respiratory Care Board  
10 of California the costs of the investigation and enforcement of this case, and if placed on  
11 probation, the costs of probation monitoring;

12 3. Taking such other and further action as deemed necessary and  
13 proper.

14 DATED: October 24, 2006

15  
16  
17 Original signed by Liane Zimmerman for:  
18 STEPHANIE NUNEZ  
19 Executive Officer  
20 Respiratory Care Board of California  
21 Department of Consumer Affairs  
22 State of California  
23 Complainant  
24  
25  
26  
27  
28